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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * * * * * * * *
*
UNITED STATES OF AMERICA *
* 11-cr-06-01-JL
v. * October 6, 2011
* 10:55 a.m.
BRIAN MAHONEY *
*
* * * * * * * * * * *

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOSEPH N. LAPLANTE

Appearances:

For the Government: Arnold Huftalen, AUSA
U.S. Attorney's Office
53 Pleasant Street
Concord, NH 03301

For the Defendant: Paul J. Garrity, Esq.
14 Londonderry Road
Londonderry, NH 03053

Court Reporter: Diane M. Churas, CSR, CRR
Official Court Reporter
U.S. District Court
55 Pleasant Street
Concord, NH 03301
(603) 225-1442

1 BEFORE THE COURT

2 THE CLERK: The Court has before it for
3 consideration this morning a status of counsel hearing
4 in Criminal Case 11-cr-06-01-JL, United States of
5 America versus Brian Mahoney.

6 THE COURT: All right. We're here on two
7 motions filed pro se by Mr. Mahoney. One is a motion
8 for status of counsel. One is a motion for me to recuse
9 myself from the case.

10 THE DEFENDANT: Absolutely.

11 THE COURT: Just for the record, when I was
12 not in chambers but when I was in the conference room
13 behind the courtroom, there was some shouting going on
14 in here. So I wanted to come in and put that on the
15 record and ask what's going on.

16 THE DEFENDANT: Well, one, I just want to make
17 the Court very aware and I want to make the prosecutor
18 very aware that when you were a prosecutor, Judge, you
19 gave a man, Bruce Belton, a five-year pre-indictment
20 offer, you gave to this man to give to his client. He
21 failed to give that to his client. This man went to
22 trial and he got 23 years.

23 THE COURT: Yeah. That's in your motion.

24 THE DEFENDANT: Right. And I just wanted to
25 make sure.

1 Also, the motion -- the case that he's trying
2 to use that I was a sex offender 29 years ago, that case
3 is very active and is still active.

4 THE COURT: All right. Sit down. I
5 understand.

6 Look, when you put things in motions, you can
7 be confident that I'm going to review them and consider
8 them. Coming into court and yelling about them isn't
9 going to do you any good. You made that point about the
10 Belton case in your motion and it's something the Court
11 needs to consider in that motion.

12 THE DEFENDANT: Right, your Honor.

13 THE COURT: But don't come into court and yell
14 and scream.

15 THE DEFENDANT: Your Honor, when he's
16 submitting half the reports without the raised seal,
17 which Prosecutor Arnie Huftalen did, that's committing
18 fraud upon this Court. I'm not going to allow him to do
19 that anymore, Judge.

20 THE COURT: All right. So --

21 THE DEFENDANT: And I'm going to put that in
22 front of him if he continues to do his game. You have
23 to get order in the court somewhere. You either have to
24 make a decision, Judge, one, under the Fourteenth
25 Amendment -- I've been in here 12 months for nothing

1 whatsoever. You're continuously holding me. This is a
2 financial emergency that we are in. This is a
3 recession. You have an innocent person in prison. I
4 can't be released today? You can release me today,
5 Judge, and I can file my motions properly through
6 typing. But if we don't have order in the court, and of
7 course what you did as a prosecutor, I have no
8 confidence in you, your Honor. I'm sorry.

9 THE COURT: All right. Understood.

10 THE DEFENDANT: And I cited case law on that
11 by the way. It's D New Hampshire 113, Bruce Belton
12 versus United States, July 15th. I think the judge was
13 Judge DiClerico. Although I don't know if he was in
14 this conspiracy against Bruce Belton. There is not
15 going to be a conspiracy against Brian Mahoney.

16 THE COURT: I have two motions in front of me.
17 I have to have an orderly courtroom just to get through
18 these motions.

19 THE DEFENDANT: Right. Well, the first one --

20 THE COURT: Stop. Order in the courtroom
21 means one person at a time talking.

22 THE DEFENDANT: I'm sorry, your Honor.

23 THE COURT: So I'm going to tell you, I really
24 do want to get through these motions today and give them
25 full consideration. The problem is if you keep jumping

1 up and yelling, I'm going to have to have you brought
2 downstairs until you calm down. A courtroom has got to
3 be a place where we can have a conversation, not a
4 shouting match. The right thing to say in that
5 situation is, yes, sir, I get it.

6 THE DEFENDANT: These are medical records that
7 I have medication, a court order. We are going to try
8 that again today. Medication has not been given to me.
9 I have been on medication for seven years. I know
10 you're not a doctor, but there is medication here that
11 says Seroquel should be administered. Go ahead.

12 THE COURT: Did you file something about your
13 medication that I'm not aware of?

14 THE DEFENDANT: Your Honor, I've been on this
15 medication for high anxiety.

16 THE COURT: I didn't ask you that. You keep
17 telling me you're a lawyer. Here's how it works in
18 court, counsel. I ask you questions. You answer them.
19 You don't make speeches about what's been asked. Did
20 you file something about your meds that I'm unaware of?
21 Did you?

22 THE DEFENDANT: I did not, your Honor.

23 THE COURT: Okay.

24 THE DEFENDANT: I did --

25 THE COURT: If you or your counsel does, I

1 will consider it. I also don't want to just blow it
2 off. I mean it's about your health. But I'm trying to
3 talk about one thing at a time and you can't seem to
4 stay on one point at a time.

5 THE DEFENDANT: Okay, Judge. I'll do my best.

6 THE COURT: I don't want to suspend this
7 hearing until you calm down, but I'm going to have to if
8 you don't calm down pretty soon.

9 Now, you've got two motions. One is on your
10 lawyer.

11 THE DEFENDANT: Right.

12 THE COURT: And one is on the Court.

13 THE DEFENDANT: Right.

14 THE COURT: Okay. Before now we did send you
15 to have a psychiatric evaluation conducted regarding
16 your competency.

17 THE DEFENDANT: That's correct, your Honor.

18 THE COURT: And we got an opinion that said
19 you were competent to stand trial.

20 THE DEFENDANT: That's correct. That was just
21 on his opinion, not on the testing. They refused to
22 submit the testing to the Court, which could have been
23 favorable to Brian Mahoney.

24 THE COURT: Okay. There was testing?

25 THE DEFENDANT: There was testing. It was the

1 Minnesota -- it was the one that -- she refused to
2 submit that to the Court because she said I manipulated
3 it. Obviously I never had testing like this in my life.
4 That could have been favorable in my decision. So I
5 said, you know what? I've got my own doctors.

6 THE COURT: When you say favorable --

7 THE DEFENDANT: Favorable, right.

8 THE COURT: In other words, because the
9 finding was that you were competent is that not a
10 favorable decision?

11 THE DEFENDANT: The decision on here was
12 favorable based on an opinion, based on federal rules of
13 criminal --

14 THE COURT: Are you saying that it would have
15 been more favorable to you if the opinion had been that
16 you were not competent?

17 THE DEFENDANT: We don't know, your Honor,
18 because she never gave the Court the testing results.

19 She withheld them because Mr. Mahoney manipulated them.
20 Read the documentation. I did go to Suffolk University
21 Law School to become number one just as Christa
22 McAuliffe was number one. She inspired me.

23 THE COURT: All right. Since that time I've
24 approved funds to have you evaluated further by Dr.
25 Mart; right?

1 THE DEFENDANT: Right.

2 THE COURT: Dr. Mart -- I have a letter from
3 Dr. Mart. Have you seen this letter?

4 THE DEFENDANT: That's the letter.

5 THE COURT: The letter suggests at least a
6 couple things. Number one, that he hasn't completed the
7 evaluation yet.

8 THE DEFENDANT: Right.

9 THE COURT: And it appears to me that Dr. Mart
10 may be of the opinion preliminarily, okay, that you're
11 not competent to stand trial. In other words,
12 incompetent to assist your counsel in conducting your
13 defense or conducting it on your own.

14 Now, with that opinion in front of me, I'm in
15 a little bit of a difficult situation, Mr. Mahoney.
16 Here's why. If you want to proceed pro se --

17 THE DEFENDANT: Yes.

18 THE COURT -- I don't want to stand in your
19 way, okay? But to do that -- and you know this because
20 you filed a very good motion on it. I have to ask you
21 some questions to determine if you can knowingly and
22 voluntarily and intelligently waive your right to
23 counsel and proceed pro se. Okay. The problem is I
24 have in front of me a letter which calls into question
25 your ability to make that waiver.

1 THE DEFENDANT: Right.

2 THE COURT: So it's hard for me to -- I want
3 to give you the relief you want, if that's what you
4 want.

5 THE DEFENDANT: Yes.

6 THE COURT: But the problem is with this, even
7 if I conduct the questions and answers, those questions
8 and answers -- the answers will be under a cloud of
9 question and doubt because Dr. Mart preliminarily seems
10 to be indicating, he thinks you might not be competent.

11 THE DEFENDANT: I haven't taken anything with
12 him. I understand the Court's reasoning for that, but I
13 haven't signed anything. The only thing he spoke about,
14 why are you firing your counsel. And I just said that I
15 think we are all done with this conversation today.

16 And of course there was another cited case law
17 that has influenced since we last met that has been
18 entered into the First Circuit.

19 THE COURT: All right. So Dr. Mart in this
20 letter here, September 26, 2011 letter which is part of
21 the record, he has confirmed some of the things you just
22 told me, that you didn't get very far, and he has
23 characterized your behavior in a way that seems
24 consistent with what I'm observing, which is a little
25 bit grandiose and pressured speech. Doesn't mean you're

1 not competent.

2 THE DEFENDANT: That's correct.

3 THE COURT: It's just a description.

4 THE DEFENDANT: That's correct.

5 THE COURT: Now, I think what I need to do is
6 let him complete this evaluation of you because if
7 you're not competent, I can't take your waiver of your
8 right to counsel. So I'm going to ask you a question.

9 THE DEFENDANT: Right. That's correct.

10 THE COURT: Are you willing to cooperate with
11 him just to complete his evaluation? He will bring the
12 right forms. I also would think -- I'm going to ask
13 counsel about this -- if we could get him those
14 results -- if we can get him the raw data from the prior
15 evaluation so Dr. Mart can review that. Whether or not
16 it's subject to manipulation is up to somebody else.
17 What I'm saying is, is there any problem with doing
18 that?

19 MR. HUFTALEN: I don't know.

20 THE COURT: I don't think so.

21 MR. HUFTALEN: I will call BOP. I will talk
22 with them. I will do everything in my power to get them
23 to voluntarily produce it. If they won't, I will report
24 to the Court that they won't voluntarily produce it.

25 THE COURT: In other words, those are records

1 that pertain to you. I don't see why an expert assigned
2 to evaluate you wouldn't be allowed to read them and
3 even retest if you wanted to. But certainly, you know,
4 if you think it's important for the Court to see those
5 records, I want to see them, too.

6 THE DEFENDANT: Well, your Honor, I object to
7 that because of the fact that she had made me competent.
8 I would state as a competency I want to have -- as far
9 as her opinion of competency, I think in this court we
10 have to realize that I am competent based on the rules
11 and regulations of the court. I am fully well aware of
12 the way the procedure works.

13 Second of all, the fact that I am competent, I
14 want to be able to represent myself pro se now that I am
15 competent, but because there has been a decision on
16 August 23rd, a week after I last saw you, by Chief
17 Justice John Woodcock, Jr. -- I believe you might be
18 aware of him.

19 THE COURT: I am.

20 THE DEFENDANT: His decision states that under
21 a competency evaluation, under a temporary competency
22 evaluation, as far as insanity goes, Judge Woodcock made
23 the first decision in the First Circuit Court of Appeals
24 stating that temporary insanity is a legal grounds to
25 have a case dismissed based on the fact if something was

1 done wrong to you.

2 We know now today through Prosecutor Huftalen
3 and my own attorney that I was the first person in the
4 United States placed on the Worldwide Web page for sex
5 offender 25 years after being acquitted.

6 Now, I'm going to take an exception to this.

7 If you were placed on a web page after you were
8 acquitted of a vicious and violent gang rape by a jury
9 of your peers, under the Fifth Amendment in order for
10 that to ever be brought out -- but it was. It was
11 officially marked.

12 These two gentlemen stated, even my own
13 doctor, yeah, Mr. Mahoney was placed on that web page
14 wrongly. That is temporary insanity when someone is put
15 on the web page. I became temporarily insane from
16 November 18, 2009, to that point and I still am that
17 because I'm still locked up and incarcerated for a crime
18 I was merely acquitted for. Woodcock has made a
19 decision --

20 THE COURT: If I understand you correctly,
21 what you're trying to tell me is you have a defense to
22 the case -- let me finish. I'm trying to understand.
23 You have a defense to the case involving your mental
24 state.

25 THE DEFENDANT: Temporary insanity,

1 absolutely.

2 THE COURT: Insanity is a defense you want to
3 assert at trial.

4 THE DEFENDANT: Well, I think what Judge
5 Woodcock had done -- this is a man by the name of Derek
6 Sander -- in space last year threatened a crew of an
7 airplane, was facing 25 years. Mr. Woodcock, the judge,
8 and the prosecutor and his own defense lawyer -- I think
9 the defense lawyer was MacFee (ph). I think the
10 gentleman was someone from -- a Counsel MacFee out of
11 Maine. They all agreed Derek Sander was temporarily
12 insane. In the end his case was dismissed. He can get
13 his life back.

14 I want that to be rendered in this decision.
15 I want my life back, Judge, for something that was done
16 to me, cruel and unusual punishment under the Eighth
17 Amendment. Not only was it placed on the web page. I'm
18 held on no bail and I'm an innocent person.

19 I do understand the prosecutor -- he did say
20 nonetheless we are going to go back to the 1992 case.
21 Well, we have a judge in Massachusetts whose name is
22 Patti Saris. She sat with the great and powerful Bruce
23 Selya. Bruce Selya says any sex offender willing to
24 challenge the laws, you have to trace the subsequent long
25 history back.

1 In 1989 when I was released for asking a woman
2 for oral sex only, period, she said I punched her in the
3 face. She said I kicked her in the back. She said I
4 kicked her on both legs. She said I had a knife to her
5 throat. And she still got away.

6 My punches are violent, Judge. I'm an
7 ironworker for 21 years. If I punch you, him, or him in
8 the face, you're never getting up. Never mind a
9 five-foot, two-inch, 104-pound lady.

10 Then he says, what Mr. Mahoney got eight years
11 in prison for, about five, six -- back then there was no
12 truth in sentencing. Mr. Mahoney had to commit a
13 vicious crime. Not only was it 12 years old, not only
14 was it 14 years old -- that's what they put down on me,
15 that I asked a 12-year-old for oral sex. I'm not a sex
16 offender, Judge. The woman was 16 years old. Back to
17 subsequent history in 1982, 16 was the legal age.

18 THE COURT: Can I look at the letter you held
19 up about Judge Woodcock?

20 THE DEFENDANT: Sure.

21 THE COURT: Thank you. That's authority you
22 want me to read; right?

23 THE DEFENDANT: Right. I'm asking for the
24 estimated copies. I'm asking for that decision and it's
25 an oral decision. That's Judge Woodcock's decision. It

1 was verified by my own attorney a couple weeks ago.

2 THE COURT: One thing I want to make clear
3 about.

4 THE DEFENDANT: Sure.

5 THE COURT: Any more documents passing back
6 and forth, I'd like the court security officer to handle
7 that. I don't want the deputy clerk anywhere near this
8 defendant.

9 THE DEFENDANT: I was just giving it to her.

10 THE COURT: I know it's not your fault. The
11 deputy clerk walked up. If you're going to sit there
12 and talk about punching me and counsel and everybody, if
13 you're going to sort of litter your comments with sort
14 of thinly veiled physical threats, I don't want the
15 deputy clerk anywhere near him.

16 THE DEFENDANT: You have to look at my
17 position, Judge. I'm held with no bail. I'm an
18 innocent person.

19 THE COURT: I am not saying you're not
20 frustrated.

21 THE DEFENDANT: Right. I want you to sit in
22 jail for twelve months night and day and see how you
23 feel by the twelfth month. (Pause.)

24 THE COURT: Oh, this was a letter where you
25 asked for a copy of that decision?

1 THE DEFENDANT: I asked for it. They have it.
2 That is an official document. Of course the funds could
3 be -- that could cost as much as \$500. I'm waiting for
4 the estimate now.

5 THE COURT: A copy of the decision?

6 THE DEFENDANT: No, no. I need the estimated
7 copies. It's an oral decision.

8 THE COURT: Oh, the transcript.

9 THE DEFENDANT: So it could be as much as
10 \$500. That's my theory. That's a decision where the
11 guy was facing 25 years and he walked out the door and
12 got his life back. Interfering with space now which of
13 course under Homeland Security, he should have went to
14 prison for 25 years. I'm going to get less than that.
15 I'm not even going to get ten months.

16 THE COURT: Stop just for a minute. In his
17 September 26, 2011, letter Dr. Eric Mart, who is a
18 forensics psychologist who has testified in this court
19 on several occasions and who I have seen his testimony,
20 he's been qualified as an expert. He writes the
21 following: That he met with Mr. Mahoney on
22 September 23, 2011. He says, quote, when I spoke to Mr.
23 Mahoney he appeared quite manic and it was difficult to
24 follow him. His speech was quite rapid and pressured
25 and it was very difficult for me to ask him questions or

1 elicit relevant responses, unquote.

2 I will state for the record that's precisely
3 the observation I'm making today. It's not that I think
4 Mr. Mahoney is necessarily irrational or cannot exercise
5 reason, but he does appear manic. It is difficult to
6 follow him. His speech is rapid and pressured, and it
7 is difficult for me to ask him questions to elicit
8 relevant responses because the questions I ask tend to
9 elicit responses that go in different directions,
10 directed mostly by his frustration with his current
11 situation.

12 Back to the letter, quote, Mr. Mahoney appears
13 to have some basic misunderstandings regarding his legal
14 situation, some of which appear to border on the
15 delusional. He is grandiose and I believe this may be
16 affecting his judgment and decision-making process
17 regarding his case, closed quote.

18 Again, that's precisely the observation I'm
19 making today. We are discussing an insanity defense of
20 a different case which may or may not have bearing on
21 this case. It might. I don't know.

22 THE DEFENDANT: It's the same exact symptoms
23 that I was hospitalized for at Baylor. I have the
24 report here.

25 THE COURT: Here's the problem. Again, you

1 keep telling me you understand how it works in court,
2 but we're not talking about that right at this second.
3 We're talking about something else and you keep throwing
4 it at me. That makes me -- it makes me question whether
5 you can represent yourself in court. There's more to
6 this than shouting what comes into your mind when it
7 hits the top of your head. There's more to it. It's
8 much more challenging to persuade a Court or a jury or
9 to prevent a prosecutor from doing something. All
10 right? So just take it easy a minute.

11 THE DEFENDANT: Again, Judge, I'm an innocent
12 person held in consternation. This happened to me in
13 the Billerica house of correction. I walked out the
14 door. I have a Massachusetts appeal court saying, oh,
15 by the way, Mr. Mahoney was incarcerated on that crime.

16 I'm not going to continue to sit in prison
17 while I'm waiting for another judge. Like I said, you
18 go 12 months and see how you feel. Believe me, it's
19 more than being at that level. I'm innocent, there's no
20 question about it. And that decision is a very big
21 decision. It's a First Circuit Court decision, and
22 Chief Woodcock is a legend, trust me.

23 THE COURT: I was with Judge Woodcock
24 yesterday. I know him very well.

25 THE DEFENDANT: He's a legend.

1 THE COURT: Back to the letter. Quote, under
2 the circumstances the Court may wish to consider whether
3 a new psychiatric assessment and possible treatment may
4 be helpful in ameliorating the symptoms to the point
5 where a forensic psychological evaluation would provide
6 more and better information, closed quote.

7 THE DEFENDANT: Well, Judge, I would just
8 further add to that that I was just examined by Dr.
9 Kissin. She's a forensics pathologist and she said that
10 I'm competent and she gathered all these facts and
11 information and she said that I'm competent to stand
12 trial. But of course she didn't know about this
13 temporary decision. When you're temporarily insane, you
14 have a right to get your life back.

15 THE COURT: See, you say you can represent
16 yourself. Those two concepts have nothing to do with
17 each other in any decision the Court has to make. One
18 is a defense to a charge, and one goes to the issue of
19 whether you can even be tried for the charge in the
20 first place. They're not the same. They're not
21 related. All right? That's not unimportant information
22 and you're not demonstrating that you grasp that.

23 THE DEFENDANT: Well, I am demonstrating one
24 thing. We've already had a court-ordered psychiatric
25 evaluation. I'm going to object to any further

1 psychiatric evaluation. She made a ruling I'm competent
2 to stand trial, and I can truly go pro se. And that's
3 it. I'm going to object to anymore competency
4 evaluations.

5 THE COURT: Your objection is noted. But --
6 wait a minute. I already ordered one at your request.

7 THE DEFENDANT: Exactly, Judge. And it was
8 court ordered and I --

9 THE COURT: No, no, no, a follow-up one by Dr.
10 Mart.

11 THE DEFENDANT: That's independent. I don't
12 have to be subjected to an independent evaluation,
13 Judge. We know this. Come on. I've been doing this
14 for 28 years. Seventeen is number one. In the country,
15 that is. I'm very brilliant at law, Judge.

16 THE COURT: I can tell.

17 THE DEFENDANT: I can cite case laws. I know
18 that much.

19 (Pause.)

20 (Mr. Mahoney conversing with Mr. Garrity.)

21 THE COURT: I'm looking for a criminal code.
22 I only have two civil codes up here. You wanted to say
23 something, Attorney Garrity?

24 MR. GARRITY: Yes, your Honor. Mr. Mahoney
25 just showed me a document that he authorized me to show

1 you. I think it sheds further light on this issue.

2 THE COURT: Okay.

3 THE DEFENDANT: That was a year before the
4 indictment, Judge. I've been seeking psychiatric help
5 for years.

6 MR. GARRITY: I've just had a brief chance to
7 scan this. I didn't read the whole report, but it talks
8 about Mr. Mahoney perhaps having psychotic issues and
9 psychosis along with bipolar.

10 THE COURT: Just for the record -- we'll have
11 to docket this. This is -- it is a September 20, 2011,
12 document.

13 THE DEFENDANT: That's when they sent it to
14 me, Judge.

15 THE COURT: Okay. It's actually --

16 THE DEFENDANT: May 25, 2010.

17 THE COURT: Actually April 21, 2010.

18 THE DEFENDANT: Right. A year before the
19 indictment, and this is why I was seeing the
20 psychiatrist -- the psychologist because of the fact
21 that I was on that web page wrongfully.

22 THE COURT: Hold on. It's from Goodwin
23 Community Health located in Somersworth, New Hampshire.
24 Let me just read it, okay? It's going to take me a
25 minute.

1 THE DEFENDANT: Yeah.

2 (Pause.)

3 THE COURT: Okay. I've read it. It's a
4 report written by Diana -- is it Haile.

5 THE DEFENDANT: Diana Haile, she's my
6 psychiatrist.

7 THE COURT: Haile. Okay. Is she a
8 psychiatrist or a registered practitioner in psychiatry?

9 THE DEFENDANT: She's a doctor in psychiatry.
10 She has a ph.D.

11 THE COURT: All right. Her degree here says
12 APRN which I thought was a nurse practitioner. But
13 anyway, it doesn't matter.

14 THE DEFENDANT: That was Rachel Wenzel. She's
15 a nurse practitioner.

16 THE COURT: Anyway, this document describes a
17 visit that this defendant made to her in April of 2010.
18 I draw two things from it. One is that -- you made some
19 points in it that were consistent with the points you
20 made today, that you think you may have a defense in
21 this case that led to your psychosis, psychosis
22 generated from being treated unjustly in court
23 proceedings in the past, and that may provide you
24 somewhat of an insanity defense to these charges.
25 That's number one.

1 THE DEFENDANT: Because I always said that I'm
2 the first person in the United States to be placed on
3 the web page since the law was enacted October 31st,
4 1994. That's Megan's Law on July 27, 2006.

5 THE COURT: That's point number one that I
6 take from this.

7 Point number two though is she said that when
8 you visited her, quote, he was impossible to direct to
9 the matter at hand, his medication. I let him speak for
10 a bit. Very rapid speech, almost impossible to follow.
11 Undertones of some irrational thinking and possible
12 delusions of grandeur. Quote, single man is going to
13 take down the judicial system, unquote. Quote, I am a
14 legend. No one has ever overturned that many
15 convictions, closed quote. Open quote, I am an expert
16 on law, closed quote. Also mentioned something about
17 Galileo giving him guidance.

18 THE DEFENDANT: He's the one that started
19 democracy. It's talking about the Constitutions before
20 September 25th, I believe, 1789, Constitutions that were
21 ratified.

22 THE COURT: Continuing with this note from
23 Diana Haile. Brian comes off as either bipolar with
24 possible -- Bipolar I with possible psychotic features
25 or schizo-affective disorder as well as possible anti-

1 social personality disorder traits and narcissism,
2 unquote.

3 THE DEFENDANT: I think if I may tell the
4 Court one thing. I'm not getting psychiatric counseling
5 right now at the jail. Number two, I'm deprived from
6 Xanax and the Seroquel I've been taking for the past
7 seven years. I think the third issue here is that was
8 done eight months before this indictment. It's clearly
9 showing that there was wrongdoing done to me, and she
10 asked me -- she didn't put that in why I haven't
11 committed suicide, because I told her I was acquitted on
12 May 25, 1984. And of course the government has all my
13 past down since I was ten years old. They have
14 confirmed that I was acquitted. And I'm being held, and
15 it puts a big strain on you, Judge, because I should be
16 released today to get that psychiatric help and to get
17 on that medication because by just merely keeping me in
18 the jail is depriving me of my appointments with my
19 doctor.

20 THE COURT: What's putting a strain on me is
21 this. I want to grant defendant the relief I can to
22 enable a fair trial to be conducted. I'm having a lot
23 of difficulty though getting to the issues with you at
24 all today because of the same things observed by Diana
25 Haile and by Dr. Mart, pressured speech, what appears to

1 be manic behavior, rapid speech, inability to stay on
2 point, delusions of grandeur, and some irrational
3 thinking. It concerns me because -- if you want to
4 represent yourself, I want to allow you to do that if
5 you can make that waiver knowingly, intentionally, and
6 voluntarily.

7 Secondly, I also want to give you a chance to
8 argue in a rational way why this Court, this judge,
9 should recuse himself in the case.

10 Those are things you're entitled to do, but I
11 can't do them because you can't seem to stay on point
12 today or even present even a little bit rationally.

13 You told me you don't want to submit to any
14 more competency evaluations, but I don't have a choice
15 in this situation. You are exhibiting conduct which
16 seriously calls into question whether you can even
17 participate. We might be at a point where I have to
18 have a hearing and determine either, A, you're competent
19 and we go on to trial to let you present this defense
20 you've identified, or B, you will be subjected to the
21 procedures when someone is declared to be incompetent.

22 I can't allow you to proceed on this course now.
23 There's too many serious questions about your competency
24 despite your strenuous objections.

25 THE DEFENDANT: Well, I would say one thing,

1 Judge. I'd say that the Federal Medical Center in Ft.
2 Devens, which is a federal facility, Dr. Kissin has made
3 the determination that Mr. Mahoney is competent to stand
4 trial. Her decision is the only decision that this
5 Court is bound by at this particular time because I have
6 not --

7 THE COURT: Stop. You don't understand. She
8 made no decision. She made a recommendation. I'm not
9 bound by anything she says. It's my job to consider
10 what she says at a hearing. We decided earlier that we
11 wouldn't have to have a hearing because the evidence
12 seemed to suggest, based on what she said, that you
13 appear to be competent.

14 THE DEFENDANT: Right.

15 THE COURT: There's two problems with that.
16 First of all, you've told me that I should not consider
17 what she said because she wouldn't submit certain
18 evidence to me because she has unjustifiably said you
19 manipulated the testing. That's a problem.

20 THE DEFENDANT: Right. In that case put it on
21 on the 16th as all of us agreed that I am competent to
22 stand trial, and the prosecutor agreed, and he just
23 stated that Mr. Mahoney -- and he went further and said
24 Mr. Mahoney -- we all have issues, but I believe he's
25 competent. So I'm saying the same thing.

1 THE COURT: I don't even think the court
2 reporter can keep track of what you're saying. Step one
3 of the trial, we have to have a record.

4 THE DEFENDANT: There shouldn't even be a
5 trial, Judge Laplante. There should not even be a
6 trial.

7 THE COURT: I know that's what you think.

8 THE DEFENDANT: I'm innocent. That's a
9 problem right now. When you're innocent you're trying
10 to fight for your freedom. You're trying to fight for
11 justice. You have to continue. Even my own attorney
12 last night said, Mr. Mahoney -- he said, Brian -- I
13 never lived in Massachusetts. This isn't even a federal
14 crime, Judge. I clearly lived in New Hampshire for the
15 last 12 years and that has been confirmed by the
16 evidence as well. My own attorney said, hey, there's
17 not one shred of evidence that I ever lived in
18 Massachusetts since 1999. That is a fact. This is not
19 a federal crime.

20 THE COURT: Counsel, I want to ask you a
21 question. Is there any question that as a forensic
22 psychologist as opposed to a psychiatrist, that Mr. Mart
23 is qualified to give the Court an opinion as to
24 competency? In other words, he's a psychologist instead
25 of an M.D. Does it matter?

1 MR. HUFTALEN: That's fine. Dr. Kissin is a
2 psychologist.

3 THE COURT: Thank you. Any disagreement
4 there?

5 MR. GARRITY: No, your Honor.

6 THE COURT: All right. I'm going to issue a
7 written order, but for -- based on the statements I've
8 made so far on the record in this case and the two
9 documents that have been submitted to me, the
10 September 26, 2011, letter from Eric Mart and the
11 April 21, 2010, note to the Goodwin Community Health
12 filed by Diana Haile, APRN, the Court finds that the
13 defendant may presently be suffering from a mental
14 disease or defect rendering him mentally incompetent to
15 the extent that he is unable to understand the nature
16 and consequences of the proceeding against him or to
17 assist properly in his defense. I'm therefore
18 ordering -- I'm ordering whatever resources are
19 necessary to allow Dr. Mart to continue the evaluation.
20 I'm ordering the prosecution to get the raw data from --
21 Dr. Kissin is it?

22 MR. HUFTALEN: Kissin.

23 THE COURT: The prior psychiatric examination
24 and evaluation made, I want that submitted to Dr. Mart.
25 I can't believe there's any reason it's prohibited, and

1 I think Mr. Mahoney is correct that all the results
2 should be considered by anybody, any physician or
3 myself, in making this determination.

4 Mr. Mahoney, it does not make me happy to
5 delay your proceedings in this way, but I don't see how
6 I have any choice because the way you want to proceed is
7 without a lawyer. To allow you to do that I've got to
8 determine that you are able to make that waiver. Based
9 on what I've seen today, I don't think you are and I'm
10 going to need to be persuaded otherwise.

11 I'm also going to ask counsel to continue
12 their efforts, all right, at reaching a resolution of
13 this case, if they can, for this reason. There are
14 times when Mr. Mahoney has been in this court, more than
15 once, where he has appeared to me to be competent. Not
16 only competent but understanding some of the more
17 sophisticated aspects of litigation and plea
18 negotiations. And if he can be reasoned with and you
19 can reason with each other to effect a resolution of
20 this case that everyone can live with, I encourage you
21 to do so. But don't slow down the process of getting
22 this evaluation done because whether I agree with many
23 of the things Mr. Mahoney has said today or not, he is
24 entitled to a speedy resolution of the case the best we
25 can do under the limitations we have. And I want him to

1 have that.

2 So I will issue a written order. That's the
3 order. Competency evaluation under Section 4241 of
4 Title 18 of the U.S. Code based on these records which
5 will be placed in the documents.

6 All right. Is this the only copy we have of
7 this? I'd like to return it to you.

8 MR. GARRITY: I believe so, Judge.

9 THE COURT: I will have Charli make a copy and
10 I will give you that back.

11 All right. We're in recess.

12 (Adjourned at 11:30 a.m.)

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2 C E R T I F I C A T E

3

4 I, Diane M. Churas, do hereby certify that the
5 foregoing transcript is a true and accurate
6 transcription of the within proceedings, to the best of
7 my knowledge, skill, ab:

Diane M. Churas

DIANE M. CHURAS, LCR, CM
LICENSED COURT REPORTER, NO. 16
STATE OF NEW HAMPSHIRE

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Submitted: 8/2/12

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